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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Robert D. Bushy)
Serial No.: 09/877,522) Group Art Unit: 2142
Filed: June 8, 2001) Examiner: Harrell, Robert
For: System and Method for Appliance) Atty. Docket No.: 10010240-1
Adaptation and Evolution)

REPLY BRIEF RESPONSIVE TO EXAMINER'S ANSWER

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The Examiner's Answer mailed December 28, 2005 has been carefully considered.

In response thereto, please consider the following remarks.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 08-2025.

REMARKS

The Examiner has provided in the Examiner's Answer various responses to arguments contained in Applicant's Appeal Brief. Applicant addresses those responses in the following.

I. 35 U.S.C. § 102 Rejections under Anderson '749

On page 6, section "a," of the Examiner's Answer, the Examiner again argues that Anderson '749 in fact teaches logic configured to receive software that facilitates communication between the image capture appliance and another device, and cites column 12, lines 14-19. However, as was noted in the Appeal Brief, that portion of Anderson '749 provides:

In a second embodiment of the present invention, an application program 760 may be loaded into the digital camera either from removable memory 354 (FIG. 3), or downloaded from a host computer or from a network to run in place of the control application 760.

[Anderson '749, column 12, lines 14-19]

Clearly, the above portion of Anderson '749 says nothing about receiving software that facilitates communication between the image capture appliance that receives the software and another device on the network. Instead, all that is described is generally downloading software to a digital camera. Applicant does not understand how that portion of Anderson '749 can be considered to anticipate receiving software with an image capture device "that facilitates communication between the image capture appliance and the device".

Next, on page 7 under section “a” of the Examiner’s Answer, the Examiner states “As for the argued example of the software facilitating communication between the appliance and another device, software by its nature communicates outside of itself (i.e., data in data out); to not do so would result in a black box with no utility.” As a first matter, Applicant notes that recitations found in Applicant’s claims such as “logic configured to receive software . . . that facilitates communication between the image capture appliance and [a] device” are not mere “examples” but comprise explicit limitations that must be accounted for. Again, a proper rejection under 35 U.S.C. § 102 requires a teaching of *each and every limitation* of the claim in a single reference. Second, the Examiner’s reasoning is flawed. Again, the software that is described as being downloaded to camera in Anderson ‘749 is software for updating an interface that the user uses to interact with the camera. Therefore, according to the explicit teachings in the Anderson ‘749 reference, the software does not “communicate outside itself.” Instead, it is software that supports *user* interfacing with the camera.

Regarding the Examiner’s argument under section “a” on page 7 that Anderson ‘749 teaches that the application program 760 “receives data, processes that data, and returns a result,” this is a mere assumption made by the Examiner that is not supported by Anderson ‘749. Perhaps this is the reason that the Examiner identifies no portion of the Anderson ‘749 reference for support of his argument.

Regarding the Examiner’s comments in relation to “lines 5-42” in section “a” on page 7, no column number has been identified by the Examiner, so it is difficult to follow the Examiner’s argument. Regardless, the Anderson ‘749 reference at no point states that the application program 760 replaces the drivers 754 identified by the Examiner. As is

described in detail in Applicant's specification, and as is well known in the art, the driver is the component that in fact "facilitates communication" between one device and another. Again, it is clear that the application program 760 facilitates communications *with the user* of the camera, not with other devices. As a further point, Applicant notes for the record that the claim terms must be interpreted in light of the specification. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995)(in banc), *aff'd*, 517 U.S. 370, 38 USPQ2d 1461 (1996). Applicant's specification clearly indicates that Applicant's "software" for facilitating interdevice communications acts in the capacity of a driver. See, e.g., Applicant's specification, page 2, line 21 to page 3, line 3.

Regarding the Examiner's comments as to the downloaded "application program 760" replacing a "control application," Applicant notes that Anderson '749 does *not*, as is argued by the Examiner, teach that the control application "uses drivers 754 that are used for external communications." Instead, Anderson '749 only states that the control application interacts with a "tool box 752." Anderson '749, column 12, lines 5-8. Therefore, the Examiner's various conclusions presented on page 7 of the Examiner's Answer as to what "replacement" of the control application 750 by the application program 760 entails are not actually supported by Anderson '749.

Regarding sections "b" through "d" on page 7, Applicant refers back to the discussions provided in regard to section "a" given that the Examiner appears to simply repeat the arguments first presented in section "a."

Regarding point "e" of the Examiner's Answer, Applicant reiterates that Anderson '749 provides no teaching of an image capture device periodically searching for updates. Simply stated, the Examiner's speculations as to what might happen on Anderson's

camera find no support in the Anderson '749 disclosure. Again, a proper rejection under 35 U.S.C. § 102 requires a teaching *of each and every claim limitation*. That Anderson '749 does not teach what the Examiner purports it to teach perhaps explains why the Examiner cites no portions of Anderson '749 to support his arguments.

Regarding point “f,” Applicant refers back to the discussions provided in regard to section “a” above.

II. 35 U.S.C. § 102 Rejections Under Anderson '538

On page 8, under section “a,” the Examiner argues that Anderson '538 clearly states that Anderson's application program is to run in place of the original control program, and cites column 10, lines 40 et seq. Regardless, the fact remains that Anderson '538 does not teach, for example, “logic configured to receive software . . . that facilitates communication between the image capture appliance and [a] device”. Column 10, lines 40 et seq. of Anderson '749 actually provide:

The directed image capture sequence 618 may be loaded into the digital camera 110 from the removable memory 354 (FIG. 3), a host computer, or a network, and stored in DRAM 346 to run in place of the control application 602. In a preferred embodiment, the directed image capture sequence 618 is implemented using a script, which is a program written with text-based commands that may be easily written by the user. As used herein, a script may be written in any interpreted language, such as Basic and Lisp, for example.

Once loaded into the camera, the script may be selected by the user from a menu where it is displayed for selection, and is thereafter executed by the control application 602 by passing the script to the script interpreter

610. The script interpreter 610 then translates and executes the script instructions comprising the directed image capture sequence 618 one-by-one.

In an alternative embodiment, a directed image capture sequence 618 may be implemented as a traditional application program, rather than a script. However, an application program is typically written by a software developer in a traditional computer language, such as C++, compiled, and stored in machine language, which is a more complicated process than adding new functions to the camera via a text-based interpreted script.

[Anderson '538, column 10, lines 40-64]

Regarding the above excerpt, Applicant notes that the “directed image capture sequence 618” is *not* described as serving the function of a driver, i.e., the component that facilitates communications between Anderson’s camera and another device. Moreover, as with Anderson ‘749, the “control application” is *not* described as controlling any such drivers. Instead, the control application is only described as interfacing with a tool box 604. Anderson ‘538, column 10, lines 5-8.

Regarding section “b” on page 8, Anderson ‘538 says nothing of an image capture device periodically searching for updates. Again, the Examiner cites no portions of Anderson ‘749 to support his argument that Anderson ‘538 in fact teaches that aspect. Therefore, the Examiner’s conclusory remarks that Anderson’s camera “actively looked for and retrieved software” are not based in fact.

III. 35 U.S.C. § 103 Rejections

On page 8, under section “a,” the Examiner defends his position that the section 103 rejections, which are based upon the same references that were used under 35 U.S.C.

§ 102, do not in any way undermine his rejections under section 102. The Examiner is entitled to that opinion.

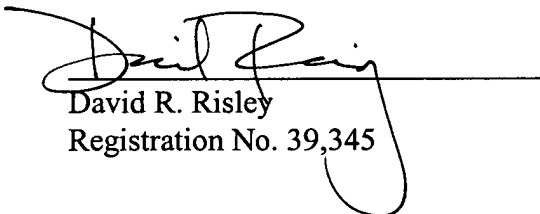
Regarding section “b” on page 9, Applicant refers back to the discussions of Anderson ‘749 and Anderson ‘538 provided above given that the Examiner appears to solely rely upon those teachings in defending the rejections under section 103, and makes no reference to the other cited references.

Regarding section “c” on page 9, Applicant refers back to the discussions of Anderson ‘749 and Anderson ‘538 provided above given that the Examiner appears to solely rely upon those teachings in defending the rejections under section 103, and make no reference to the other cited references.

CONCLUSION

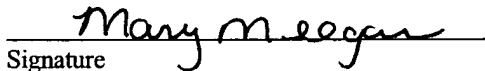
In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Alexandria, Virginia 22313-1450, on

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PATENT APPLICATION

ATTORNEY DOCKET NO. 10010240-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Robert D. Bushy

Confirmation No.: 1432

Application No.: 09/877,522

Examiner: Harrell, Robert

Filing Date: 6-8-01

Group Art Unit: 2142

Title: System and Method for Appliance Adaptation and Evolution

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Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on 12-28-05.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

If any fees are required please charge Deposit Account 08-2025.

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Respectfully submitted,

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